

Memorandum 2007-22

**Trial Court Restructuring: Appellate Jurisdiction of Bail Forfeiture
(Draft of Tentative Recommendation)**

At the April meeting, the staff suggested how to clarify jurisdiction of bail forfeiture appeals, which became unclear after the trial courts were unified. CLRC Minutes (April 2007), pp. 7-9. The Commission approved the concept that bail forfeiture appeals should be handled as they were before trial court unification, with adjustments solely to reflect the unification of the courts. *Id.* A draft of a tentative recommendation embodying that approach is attached.

This memorandum addresses comments sent by an attorney, Mr. Alan Nuñez. Exhibit pp. 1-9. Next, the memorandum discusses the issue of writ jurisdiction relating to bail forfeiture, which was raised but not analyzed in CLRC Memorandum 2007-14 or its First Supplement. The memorandum then describes and analyzes a circumstance, not previously identified by the staff, where a bail forfeiture appeal could have arisen before unification: at a felony sentencing hearing *before* the filing of an information. Finally, the memorandum explains certain minor issues relating to the draft legislation.

COMMENTS BY MR. NUÑEZ

Mr. Nuñez is an attorney with a long-standing practice in bail forfeiture appeals. Exhibit p. 1. He opposes the Commission's decision to recommend legislation preserving the pre-unification path of bail forfeiture appeals. See *id.*

Mr. Nuñez asserts that Code of Civil Procedure Sections 904.1 and 904.2, as amended to implement unification, together with Code of Civil Procedure Section 85 (hereafter "civil appellate rules"), unambiguously apply to bail forfeiture appeals since they are civil proceedings. See Exhibit p. 2 (citing to several cases, including *People v. United Bonding Co.*, 272 Cal. App. 2d 441, 442 (1969), for civil nature of bail forfeiture proceedings). He states:

Any California Law Revision Commission document referred to in this memorandum can be obtained from the Commission. Recent materials can be downloaded from the Commission's website (www.clrc.ca.gov). Other materials can be obtained by contacting the Commission's staff, through the website or otherwise.

If the amount of bail is \$25,000 or less, it is a limited civil case . . . and any appeal is to the appellate division of the superior court. If the amount of bail is over \$25,000, the appeal is to the court of appeal.

Exhibit p. 6. Accordingly, he argues, no clarification of jurisdiction of bail forfeiture appeals is needed. Exhibit pp. 2, 9.

Court Uniformity

Mr. Nuñez says courts uniformly apply the civil appellate rules to bail forfeiture appeals, with the exception of the Santa Clara County Superior Court, which requested clarification of the proper appeal path. Exhibit p. 3. A survey of post-unification bail forfeiture appeals, however, shows otherwise.

Under the civil appellate rules, bail forfeiture appeals involving bail of \$25,000 or less would go to the appellate division of the superior court. However, such appeals, including ones litigated by Mr. Nuñez, have been taken instead to the court of appeal. See, e.g., *People v. Ranger*, 145 Cal. App. 4th 23, 51 Cal. Rptr. 3d 326 (2d. Dist. 2006) (appeal of bail forfeiture involving bail amount of \$20,000 taken to court of appeal); *People v. Granite State Ins. Co.*, WL 21227856 (2d. Dist. 2003) (same); *People v. Accredited Sur. & Cas. Co.*, WL 1542116 (6th Dist. 2003) (appeal of bail forfeiture involving bail amount of \$10,000 taken to court of appeal).

The need for clarification is underscored by the above cases, which illustrate an indiscriminate appeal path of bail forfeiture cases. See *id.* One case followed neither the pre-unification path nor the civil appellate rules. See *Ranger*, 145 Cal. App. 4th 23 (appeal of bail of \$20,000 forfeited by magistrate at preliminary hearing on felony charge taken to court of appeal).

To resolve the confusion, **the staff continues to recommend clarifying legislation on appellate jurisdiction of bail forfeiture cases.**

The California Supreme Court Decision in Newman

Mr. Nuñez states that Santa Clara County Superior Court's reluctance to apply the civil appellate rules to bail forfeiture appeals is due to a misreading of a California Supreme Court decision, *Newman v. Super. Ct. of Los Angeles County*, 67 Cal. 2d. 620, 432 P.2d 972, 63 Cal. Rptr. 284 (1967). Exhibit pp. 4-6.

Newman held that the court — municipal or superior — that ordered bail forfeiture, not the amount of bail, determines appellate jurisdiction. *Id.* at 621-623. The decision established that an appeal from bail forfeiture by a municipal

court magistrate was an order of that court and therefore fell within the appellate jurisdiction of the appellate department of the superior court. *Id.* at 621-622, 623-625.

Mr. Nuñez argues (1) that *Newman* also held the superior court, not the municipal court, had jurisdiction to enter the summary judgment (a consent judgment at the end of the 180-day appearance period, which occurs after a bail forfeiture order), and (2) the outcome in *Newman* would have been different had the case reached the point of entry of summary judgment by the superior court. Exhibit pp. 4-5.

Mr. Nuñez's arguments are moot due to a statutory amendment, enacted after *Newman* but long before unification, providing that the summary judgment could be entered by *any* court declaring the forfeiture, regardless of the amount of bail. See 1977 Cal. Stat. ch. 889, § 3.5 (amending Penal Code Section 1306 to allow the court ordering forfeiture to enter summary judgment, regardless of whether the bail amount was within that court's civil jurisdiction); see CLRC Memorandum 2007-14, p. 6.

Thus, before unification, an appeal from bail forfeiture, whether from a bail forfeiture order or summary judgment, by a municipal court magistrate at a preliminary hearing on a felony charge was within the appellate jurisdiction of the appellate department of the superior court. The Commission's proposed approach would just continue that path.

Accordingly, **the staff recommends against changing the proposed path of an appeal from bail forfeiture by a magistrate at a felony preliminary hearing.**

Policy

Mr. Nuñez argues that the civil appellate rules should apply to bail forfeiture appeals because it is good policy to direct appeals involving higher stakes, i.e., more money, to the court of appeal. See Exhibit p. 8.

If the civil appellate rules were applied to bail forfeiture appeals, however, in one instance, it would be unconstitutional. See Cal. Const. art. VI, § 11(a) ("courts of appeal have appellate jurisdiction when superior courts have original jurisdiction in causes of a type within the appellate jurisdiction of the courts of appeal on June 30, 1995"). Before unification, the court of appeal had jurisdiction of a bail forfeiture appeal if the underlying charge, in an information or indictment, was a felony, regardless of the amount of bail. However, application of the civil appellate rules would place such appeals involving bail of \$25,000 or

less in the appellate department of the superior court, instead of the court of appeal. This would unconstitutionally remove such appeals from the appellate jurisdiction of the court of appeal. See *id.*

To avoid that result, the civil appellate rules would have to be amended to provide an exception. While all other appeals involving bail of \$25,000 or less would go to the appellate division of the superior court, an exception would have to be made for a bail forfeiture that occurred in a felony case after the filing of the information or indictment.

The staff believes it is more logical to provide legislation that uniformly follows the pre-unification path, rather than a scheme that tracks the civil appellate rules except in one instance.

The staff appreciates that the civil appellate rules reflect a policy of placing cases involving greater amounts of money in the court of appeal, rather than the appellate division of the superior court. That policy would, however, often be realized under the proposed legislation. It largely ties appellate jurisdiction to the underlying criminal charge, and, as stated by Mr. Nuñez, felonies and misdemeanors often have bail amounts that track the former jurisdictional limit (above and below \$25,000, respectively). See Exhibit p. 3. Accordingly, application of the Commission's proposed approach will frequently render the same result as if the civil appellate rules were applied.

Taking together all of the above, **the staff recommends against revising the proposal to base bail forfeiture appeals on the amount of bail.**

Constitutionality

Mr. Nuñez argues that the Commission's proposed approach would unconstitutionally treat bail sureties differently from other civil litigants. Exhibit p. 8.

The staff disagrees. Any resulting "different treatment" would be constitutional, as rationally related to the reasonable goal of preserving pre-unification procedures. See *Dandridge v. Williams*, 397 U.S. 471, 484-486 (1970); 8 B. Witkin, *Summary of California Law Constitutional Law* § 705, at 82 (10th ed. 2005) (same result under the California Constitution). Moreover, pre-unification procedures rendered "different treatment" to bail sureties for several decades before unification, without constitutional question.

Therefore, **the staff believes that the Commission's proposal is constitutional.** After careful consideration of Mr. Nuñez's letter, we recommend

that the Commission **stick with its approach of clarifying that bail forfeiture appeals are to be handled as they were before trial court unification.**

WRIT JURISDICTION RELATING TO BAIL FORFEITURE

This section of the memorandum considers whether jurisdiction relating to bail forfeiture needs special clarification when the challenge to the forfeiture is in the form of an extraordinary writ (hereafter “writ”). After examining how the legislation in the draft tentative recommendation would interact with statutes on writ jurisdiction, the staff concludes that the proposal would already adequately address writ-based challenges to bail forfeiture.

Writ Jurisdiction After Trial Court Unification

The California Constitution and statutes governing jurisdiction to issue a writ were amended to implement trial court unification. See Cal Const. art. VI, § 10; Code Civ. Proc. §§ 1068, 1085, 1103 & Comments. In particular, the Constitution now provides:

The Supreme Court, courts of appeal, superior courts, and their judges have original jurisdiction in habeas corpus proceedings. Those courts also have original jurisdiction in proceedings for extraordinary relief in the nature of mandamus, certiorari, and prohibition. The appellate division of the superior court has original jurisdiction in proceedings for extraordinary relief in the nature of mandamus, certiorari, and prohibition directed to the superior court *in causes subject to its appellate jurisdiction.*

Cal. Const. art. VI, § 10 (emphasis added). The writ jurisdiction of the appellate division thus tracks its appellate jurisdiction.

Writs Relating to Bail Forfeiture Do Not Need Separate Clarification

The legislation in the draft tentative recommendation states that certain types of bail forfeiture appeals are within the jurisdiction of the court of appeal, and other types of bail forfeiture within the jurisdiction of the appellate division. See proposed Penal Code § 1305.5. Because the legislation would clarify which bail forfeiture appeals go to which tribunal, and because the writ jurisdiction of the appellate division tracks its appellate jurisdiction, **further clarification relating to writ jurisdiction of a bail forfeiture appeal seems unnecessary.**

ADDITIONAL CIRCUMSTANCE WHERE BAIL FORFEITURE COULD HAVE OCCURRED
BEFORE TRIAL COURT UNIFICATION

At pages 6-8 of CLRC Memorandum 2007-14, the staff identified four circumstances in which a bail forfeiture could have occurred before unification. A fifth circumstance should have been included: bail forfeiture at the sentencing of a felony defendant *before* the filing of an information.

Bail Forfeiture at Sentencing on a Felony Charge Before an Information Was Filed

Before unification, a magistrate conducting pre-information preliminary proceedings could accept a plea of guilty or no contest by a defendant on a non-capital felony charge, and then certify the case to a judge for sentencing. See Penal Code § 859a. Before unification, that judge may have been a municipal court *or* a superior court judge. See *id.*; see former Penal Code § 1462(b).

If a defendant failed to appear (without sufficient excuse) at the sentencing, the judge — municipal or superior — forfeited bail. See Penal Code § 1305(a)(3). If the bail forfeiture order was by a municipal court judge, the appeal was to the appellate department (now appellate division) of the superior court. Former Cal. Const. art. VI, § 11; former Code Civ. Proc. § 904.2. If the superior court ordered forfeiture, the appeal was to the court of appeal. Former Const. art. VI, § 11; former Code Civ. Proc. § 904.1.

Accordingly, the proper court for an appeal of a bail forfeiture ordered at a pre-information sentencing on a felony charge could have been *either* the appellate department of the superior court *or* the court of appeal. In this situation, there is no way of determining which appellate court heard the appeal, making it difficult to craft legislation that tracks the pre-unification path.

Nonetheless, the appeal should be directed to the court of appeal. The appeal involves a felony case, which fell within the original jurisdiction of the superior court and the appellate jurisdiction of the court of appeal. Former Code Civ. Proc. § 904.1; 4 B. Witkin, *California Criminal Law, Jurisdiction and Venue* § 14, at 102 (3d. ed. 2000) (citing Cal. Const. art. VI, § 10 and Penal Code § 1462 to deduce superior court original jurisdiction over felony). As such, it may be within the category of cases that may not be removed from the appellate jurisdiction of the court of appeal. See Cal. Const. art. VI, § 11(a). Therefore, to avoid a potential constitutional problem, the staff recommends **giving the court of appeal**

jurisdiction of a bail forfeiture that occurs at sentencing in a felony case before the filing of an information.

Before unification, the court of appeal had jurisdiction of a bail forfeiture appeal ordered at sentencing in a felony case *after* the filing of the information (or indictment) in superior court. Former Cal. Const. art. VI, § 11; former Code Civ. Proc. § 904.1. Therefore, it is not necessary to distinguish between forfeitures made at sentencing hearings before or after the filing of the information since an appeal from forfeiture in either situation should be to the court of appeal.

The staff recommends **that proposed Penal Code Section 1305.5 place an appeal from forfeiture ordered at sentencing on a felony charge in the court of appeal as shown in boldface italics below:**

Penal Code § 1305.5 (added). Appeal from order denying motion to vacate bail forfeiture declaration

1305.5. Notwithstanding Sections 85, 580, 904.1, and 904.2 of the Code of Civil Procedure, if the people, a surety, or other person appeals from an order of the superior court on a motion to vacate a bail forfeiture declared under Section 1305, the following rules apply:

(a) If the bail forfeiture was in a felony case, or in a case in which both a felony and a misdemeanor were charged, and the forfeiture occurred *at the judgment or* after the indictment or the legal commitment by a magistrate, the appeal is to the court of appeal and it shall be treated as an unlimited civil case, regardless of the amount of bail.

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MINOR DRAFTING ISSUES

A number of minor aspects of the draft legislation are worth mentioning.

An Appeal Should be Based on Where the Bail Forfeiture Occurred

The preliminary draft presented in April directed bail forfeiture appeals based on where the “failure to appear occurred.” CLRC Memorandum 2007-14, p. 15. However, a failure to appear by a defendant (out on bail) does not always result in a bail forfeiture order. See Penal Code § 1305.1 (court may grant time extension instead of ordering forfeiture if sufficient excuse exists for failure to appear). Therefore, it would be more precise to direct an appeal based on the *forfeiture*, rather than the failure to appear. The draft tentative recommendation takes that approach, as shown in boldface italics below:

Penal Code § 1305.5 (added). Appeal from order denying motion to vacate bail forfeiture declaration

1305.5. Notwithstanding Sections 85, 580, 904.1, and 904.2 of the Code of Civil Procedure, if the people, a surety, or other person appeals from an order of the superior court on a motion to vacate a bail forfeiture declared under Section 1305, the following rules apply:

(a) If the bail forfeiture was in a felony case, or in a case in which both a felony and a misdemeanor were charged, and the *forfeiture* occurred at the judgment or after the legal commitment by a magistrate, the appeal is to the court of appeal and it shall be treated as an unlimited civil case, regardless of the amount of bail.

(b) If the bail forfeiture was in a felony case, or in a case in which both a felony and a misdemeanor were charged, and the *forfeiture* occurred at the preliminary hearing or at another proceeding before the legal commitment by a magistrate, the appeal is to the appellate division of the superior court and it shall be treated as a limited civil case, regardless of the amount of bail.

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Proposed Penal Code Section 1305.5 Should Apply to an Appeal by the People

An order granting a motion to set aside a bail forfeiture may be appealed by the people. *People v. Wilcox*, 53 Cal. 2d 651, 655, 2 Cal. Rptr. 754, 349 P.2d 522 (1960). As shown in boldface italics below, the draft tentative recommendation would make clear that proposed Section 1305.5 would apply to an appeal by the people:

Penal Code § 1305.5 (added). Appeal from order denying motion to vacate bail forfeiture declaration

1305.5. Notwithstanding Sections 85, 580, 904.1, and 904.2 of the Code of Civil Procedure, if *the people*, a surety, or other person appeals from an order of the superior court on a motion to vacate a bail forfeiture declared under Section 1305, the following rules apply:

....

Proposed Penal Code Section 1305.5 Should Refer to the “Legal Commitment by a Magistrate” Instead of “the Filing of the Information”

Before unification, appellate jurisdiction of bail forfeiture depended on which court — municipal or superior — ordered the bail forfeiture. Accordingly, the draft legislation bases appellate jurisdiction upon which court would have ordered the bail forfeiture before unification. Since municipal courts no longer exist, the draft uses the criminal charge and stage of the proceeding as a proxy for which court would have ordered a bail forfeiture before unification.

Because a bail forfeiture order in a felony case could have come from the municipal or superior court before unification, depending on the stage of the case, the preliminary draft presented in April demarcated when a felony case was before a magistrate in municipal court versus when the case was in superior court. It did so by referring to the filing of the information, as that is the first pleading in superior court. See CLRC Memorandum 2007-14, p. 15; Penal Code §§ 739, 949.

The reference to the filing of the information, however, would not capture one situation in which a bail forfeiture in a felony case could have occurred in superior court before unification. If the district attorney failed to file the information (although obligated under Penal Code Section 739 to do that within 15 days of the preliminary hearing and legal commitment) and the order by the magistrate for the defendant to appear in superior court for arraignment on an information was not cancelled, a failure to appear could have caused a bail forfeiture in the superior court *before the filing of the information*. See Penal Code § 1305(a)(4); *People v. Heeley*, 90 Cal. App. 654, 655-656, 266 P. 555 (1928) (superior court retains jurisdiction if information not filed within 15-day period); *cf. People v. Classified Ins. Corp.*, 164 Cal. App. 3d 341, 344, 210 Cal. Rptr. 162 (forfeiture improper absent court order requiring defendant's appearance).

A more precise demarcation, therefore, is the legal commitment by the magistrate that occurs at the end of the preliminary hearing. In the legal commitment, the magistrate states that there is sufficient evidence supporting the charges in the complaint, and orders the defendant be held to answer the charges. See Penal Code § 872. Before unification, the legal commitment ended the preliminary proceedings on a felony charge before a magistrate in municipal court, and pinpointed the moment at which future appearances by the defendant were in superior court. See Penal Code §§ 739, 872. As shown in boldface italics below, the draft tentative recommendation would therefore refer to the legal commitment by the magistrate, not the filing of the information:

Penal Code § 1305.5 (added). Appeal from order denying motion to vacate bail forfeiture declaration

1305.5. Notwithstanding Sections 85, 580, 904.1, and 904.2 of the Code of Civil Procedure, if the people, a surety, or other person appeals from an order of the superior court on a motion to vacate a bail forfeiture declared under Section 1305, the following rules apply:

(a) If the bail forfeiture was in a felony case, or in a case in which both a felony and a misdemeanor were charged, and the forfeiture occurred at the judgment or after the indictment or *the legal commitment by a magistrate*, the appeal is to the court of appeal and it shall be treated as an appeal in an unlimited civil case, regardless of the amount of bail.

(b) If the bail forfeiture was in a felony case, or in a case in which both a felony and a misdemeanor were charged, and the forfeiture occurred at the preliminary hearing or at another proceeding before *the legal commitment by a magistrate*, the appeal is to the appellate division of the superior court and it shall be treated as an appeal in a limited civil case, regardless of the amount of bail.

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Respectfully submitted,

Catherine Bidart
Staff Counsel

May 9, 2007

Commission Commission
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MAY 11 2007

California Law Revision Commission
4000 Middlefield Road, Room D-1
Palo Alto, CA 94303-4739

FILED

Re: Study J-1450 – Trial Court Restructuring: Appellate
Jurisdiction of Bail Forfeiture

Dear Sirs/Madams:

I am writing to comment on the tentative recommendation regarding appellate jurisdiction in bail forfeiture proceedings. The matter was brought to the Commission's attention in October, 2006, by the bench in Santa Clara County.

Our office has practiced in the area of bail forfeiture law for some 25 years. My practice has been confined primarily to appellate litigation in that field. In that time, more than 80 of the cases which I litigated have resulted in published opinions by the Courts of Appeal and the Supreme Court of California. Indeed, the case that was attached as an exhibit to the First Supplement to Memorandum 2007-14, *The People v. Ranger Insurance Company (Skip Meyers)*, Santa Clara Superior Court Appellate Division No. 1-06-AP-000347, was one in which I was involved, and I am very familiar with the circumstances that gave rise to that court's quandary regarding appellate jurisdiction in bail forfeiture proceedings.

The unification of the courts and resultant statutory scheme for appellate jurisdiction in civil cases is clear, comprehensive, streamlined and efficient. It divides appellate jurisdiction in terms of the statutorily set monetary limit. In the case of bail forfeiture litigation, there is absolutely no reason to consider the status of the underlying criminal action.

Bail Forfeiture Proceedings Are Civil

Bail forfeiture proceedings have long been defined as "an independent, collateral matter, civil in nature . . ." *People v. Wilcox*, 53 Cal.2d 651, 654 (1960); *Newman v. Superior Court*, 67 Cal.2d 620, 625 (1967); *People v. American Contractors Indem. Co.*, 33 Cal.4th 653, 657 (2004); *People v. Walling*, 195 Cal.App.2d 640, 649 (1961); *People v. Meidell*, 220 Cal.App.2d 105, 107 (1963); *People v. Hadley*, 257 Cal.App.2d Supp. 871, 877 (1967); *People v. United Bonding Ins. Co.*, 272 Cal.App.2d 441, 442 (1969); *People v. Sue Sarkis Bail Bonds*, 182

Cal.App.3d 650, 653 (1986); *County of Orange v. Classified Ins. Corp.*, 218 Cal.App.3d 555, 557 (1990); *People v. Accredited Surety and Cas. Co.*, 125 Cal.App.4th 1, 8 (2004); *People v. Accredited Surety and Cas. Co.*, 132 Cal.App.4th 1134, 1138 (2004).

One court has said:

A bail forfeiture proceeding is a special proceeding, civil in nature, and governed by the rules which govern *all civil appeals*. (Moore v. Ohio Casualty Ins. Co. (1983) 140 Cal.App.3d 988, 992, fn. 2, 189 Cal.Rptr. 829.) ***Such a judgment is like any other civil judgment.*** We note, for example, that like any civil money judgment, a bail bond forfeiture judgment draws post-judgment interest. (County of Los Angeles v. Classified Ins. Corp. (1987) 197 Cal.App.3d 60, 63-64, 242 Cal.Rptr. 673.) And, enforcement of such a judgment is stayed only if an appeal bond is posted. (Civ.Proc.Code, § 917.1, subd. (a).) *County of Orange v. Classified Ins. Corp.*, 218 Cal.App.3d 555, *supra* at 557, emphasis supplied.

Moreover, my experience over the last 25 years is that appeals in bail forfeiture proceedings are subject to the same time limitations for filing and for payment of filing fees as any other civil appeal. Indeed, enforcement of a bail forfeiture judgment is subject to the same rules applicable to money judgments generally. Pen. Code §1306(e)(2). In all respects, bail forfeiture appeals have historically been treated as civil appeals. As such, appellate jurisdiction should be determined in the same way that such jurisdiction is determined in any other civil appeal under the current statutory scheme.

Appellate Jurisdiction Under New Statutes

Under that scheme, an action is a limited civil case if the amount in controversy does not exceed \$25,000. Code Civ. Pro. §85. An appeal in a limited civil case is to the appellate division of the superior court. Code Civ. Pro. §904.2. If the amount in controversy exceeds \$25,000, it is not a limited civil case. An appeal, other than in a limited civil case, is to the court of appeal. Code Civ. Pro. §904.1. These provisions for appellate jurisdiction in civil cases are clear and straightforward. There is no ambiguity in them, and they apply to all civil appeals. Bail forfeiture proceedings are civil, and these same rules apply to them.

Stage of Criminal Proceeding Does Not Determine Appellate Jurisdiction

In litigating bail forfeiture cases throughout the state since unification of the courts, this writer has found remarkable uniformity among courts in determining appellate jurisdiction. Even in Los Angeles County, which has the largest court system in the state, appellate jurisdiction in bail forfeiture cases is determined under the current Code of Civil Procedure provisions cited above. If the amount in controversy does not exceed \$25,000, the appeal lies with the appellate division of the superior court, while appeals in cases where the amount is over \$25,000 lie in the court of appeal, regardless of whether the forfeiture occurred before or after a defendant has been held to answer. In this writer's experience, the courts of Santa Clara County are the only ones that have resisted the simple formula of the Code of Civil Procedure provisions.

Reasons for Santa Clara's Resistance

There appear to be several reasons for Santa Clara's resistance. First, the courts of that county prefer to maintain entrenched criminal practices and procedures that have been in use since before the unification of the courts. Under the former classification of courts, municipal courts had jurisdiction in misdemeanor cases, while superior courts had jurisdiction in felony cases. Since the amount of bail in misdemeanor cases was invariably consistent with the jurisdictional limit for appellate purposes, appellate jurisdiction was rarely an issue. If bail was forfeited in a misdemeanor case, any appeal would be to the appellate division of the superior court. By the same token, appeals in felony cases, where bail usually exceeds \$25,000, were to the court of appeal. The only situations that presented any controversy were those where prosecution was by complaint and information. In those cases, the municipal court had jurisdiction of a felony case for the sole purpose of conducting a preliminary examination to determine probable cause. If a defendant was held to answer, jurisdiction transferred to the superior court, and any bail forfeiture thereafter necessarily invoked appellate jurisdiction in the court of appeal. However, if bail was forfeited by the municipal court before the defendant was held to answer and the amount of bail was in excess of the jurisdictional amount, it presented a problem. The problem was ostensibly resolved by the Supreme Court in the *Newman* case, discussed below. The practice of determining appellate jurisdiction of a bail forfeiture based on the court that declared the forfeiture, municipal or superior and regardless of the amount of bail, began and became entrenched. The practice may have provided the Santa Clara courts with a neat and convenient method of determining appellate jurisdiction, but it was supportable only as long as there were municipal and superior courts. Once the courts were unified and there is only one unified superior court, such practice is not only irrational but contrary to the law and rules that governs all civil appeals.

The second reason that Santa Clara has resisted the new rules for appellate jurisdiction in bail forfeiture proceedings is that it, as have other courts, misread the *Newman* case. That case involved a felony charge where bail was set at \$16,500, an amount in excess of the jurisdiction of the municipal court at that time. The defendant failed to appear for preliminary examination, and the bail was declared forfeited. Carl Newman, the surety's agent, filed a motion to set aside the forfeiture in the municipal court, and after the motion was denied, he filed, without paying a filing fee, a notice of appeal to the appellate department of the superior court. The appellate department thereafter returned the files and records to the municipal court, because the amount of bail exceeded its jurisdictional limits and no filing fee had been paid. Newman then sought a writ of mandate to compel the Appellate Department of the Los Angeles Superior Court to take jurisdiction and hear the appeal.

The very first and most important thing to note about the *Newman* case is that it related to the order of forfeiture and a motion to set that order aside. The case had nothing to do with the summary judgment for payment of the penal amount of the bond. In addressing the fact that it was the municipal court that declared the forfeiture of bail which exceeded its jurisdictional limit, the court said:

The statutory provisions providing for the granting of bail, and motion to set aside forfeiture, make it clear that the Legislature intended that a municipal court shall have jurisdiction to consider motions to set aside a forfeiture of bail where the amount of the bail exceeds the ordinary jurisdictional amount in civil actions. *Newman v. Superior Court*, 67 Cal.2d, *supra* at 622.

Essentially, the Supreme Court held that, under the statutory scheme, a municipal court had ***jurisdiction to declare a bail forfeiture*** if a defendant failed to appear for preliminary examination of a felony charge where the bail exceeded the otherwise jurisdictional monetary limit of that court. An appeal taken from an order denying a motion to set aside the order of forfeiture, not from any money summary judgment which was not even in the picture in *Newman*, was properly taken to the appellate division of the superior court.

Had the case proceeded to a money summary judgment, where jurisdiction to enter a judgment in excess of the monetary limit of the municipal court was in fact the issue, the outcome very probably would have been different. With regard to the entry of judgment, the court, citing the then applicable statute, said:

Section 1306 of that code provides that if the forfeiture has not been set aside within 180 days, the court which declared the forfeiture shall enter a summary judgment against the bondsman *if it has jurisdiction to render judgment in an action arising upon contract of similar nature and amount* but if the court declaring the forfeiture “has not jurisdiction to give judgment in an action arising upon a contract of similar nature and amount,” the court shall deliver to the district attorney the bond and a certified copy of the forfeiture order and the district attorney shall file those documents *in a court having jurisdiction to render judgment in a contract action of similar nature and amount*, which court shall enter the summary judgment. *Newman v. Superior Court*, 67 Cal.2d *supra* at 622, emphasis supplied.

Thus, it is clear from this passage that the Supreme Court understood that the money judgment must be entered by the court having jurisdiction in that monetary amount. Again, the court was addressing jurisdiction to declare forfeiture and not jurisdiction to render the money judgment, and it emphasized that “Section 1306 makes it abundantly clear that a municipal court has *jurisdiction to order a forfeiture of bail* where the amount exceeds the amount of its jurisdiction in contract actions. *Ibid* at 622-623, emphasis supplied. If it had jurisdiction to declare the forfeiture, any appeal from an order denying a motion to set aside the forfeiture was necessarily within the jurisdiction of the appellate department. It was in the context of jurisdiction to declare forfeiture and of appeals from an order denying a motion to set aside the forfeiture that the Supreme Court said:

Thus, the statutory scheme establishes that the amount of the bail is not determinative as to the court which may *order a forfeiture* or as to the appropriate court for appeals from *such an order*. *Newman v. Superior Court*, 67 Cal.2d *supra* at 623, emphasis supplied.

Properly read, the *Newman* case held that a municipal court had jurisdiction to declare a forfeiture and that any appeal from the order of forfeiture made by a municipal court was to the appellate department of the superior court. It likewise held that the money judgment could be entered only by the court having jurisdiction over the monetary amount.

A final thing to note about *Newman* is that the county counsel, relying on an outdated case and statutes it had spawned, had argued against jurisdiction in the appellate department because the order of forfeiture had been entered by a “magistrate” and not by a court. Rejecting the argument in view of changes in the law, the Supreme Court held:

The [county counsel’s] theory . . . is no longer tenable . . . It is clear that, in light of the subsequent changes in the constitutional provisions and the code sections, neither the holding nor the reasoning of Fenn are any longer authoritative. *Newman v. Superior Court*, 67 Cal.2d *supra* at 624.

In short, the Supreme Court recognized that things can change, and if they do, old rules may no longer apply. This is definitively true with respect to the constitutional and statutory changes that brought about the unification of the courts and new provisions defining appellate jurisdiction in civil cases.

The third reason that Santa Clara courts have resisted the new rules for appellate jurisdiction is a refusal to treat bail forfeiture proceedings as civil. As noted above, the courts have consistently held that bail forfeiture proceedings are independent, civil proceedings, collateral to the underlying criminal action. This means that such proceedings are completely separate from the criminal action, particularly once a money summary judgment is entered. The litigants are the state and the surety. The criminal defendant is no part of the picture. In fact, the reason for the proceedings is that the defendant failed to appear and is a fugitive. The new rules do not affect the jurisdiction of the Superior Court of Santa Clara County to declare a bail forfeiture. The no longer applicable *Newman* case concerned the jurisdiction of a municipal court to declare a bail forfeiture. It is now one unified superior court, and of course, it has jurisdiction to declare a forfeiture, whether it is before or after a defendant has been held to answer and regardless of the amount of bail.

The superior court also has jurisdiction to enter a money summary judgment regardless of the amount of bail. Thus, the provision of Penal Code section 1306, that “the court which has declared the forfeiture, regardless of the amount of the bail, shall enter a summary judgment,” is more *apropos* now, with one unified court, than it ever was. The amount of bail has absolutely no impact on the jurisdiction of the superior court to declare a forfeiture or to enter a money summary judgment. If the amount of bail is \$25,000 or less, it is a limited civil case under the new statutory scheme, and any appeal is to the appellate division of the superior court. If the amount of bail is over \$25,000, the appeal is to the court of appeal.

The concerns raised by the Santa Clara County courts are endemic to its entrenched practices, as the county counsel freely admitted in the memorandum of October 5, 2006, addressed to this Commission. That the West Wing of the Santa Clara court, which was once known as the municipal court, is now called the "Limited Jurisdiction - Criminal" does not deserve a statutory change because, as county counsel put, "local procedures vis-à-vis misdemeanors and preliminary hearings did not change much" and "there is definitely inertial resistance to the idea of changing the appellate structure." See Memo of October 5, 2006, p. 3, hereinafter "Memo." What should change, local practices or the statutes? Changing the statutes, because Santa Clara refuses to change its local practices is much like the tail wagging the dog.

In describing how appellate jurisdiction has become unclear, the county counsel states that "Before unification, bail forfeiture appeals from municipal court went to the appellate department of the superior court," while "with the elimination of the municipal courts, there is uncertainty about where . . . appeals belong." Memo, p. 1. The uncertainty stems not from the very clear provisions defining limited civil cases and appellate jurisdiction in civil cases but from the court's insistence on continuing to define jurisdiction in outdated, municipal court terms, listing several circumstances that allegedly create uncertainty (bail in misdemeanor cases over \$25,000, bail in felony cases under \$25,000, and bail in any amount forfeited before a defendant is held to answer). In fact, none of these circumstances create uncertainty under the new rules. Whether the criminal action is a misdemeanor or a felony is irrelevant in the context of a bail forfeiture proceeding, which is civil. Only the rules relating to civil cases and appeals in civil cases apply to a bail forfeiture proceeding, and there is absolutely no need to consider whether the underlying criminal case is a misdemeanor or a felony.

County counsel also noted that "some aspect of the *Newman* case is no longer applicable." In fact, the whole of *Newman* is no longer applicable. Memo, p. 3. The entire holding of that case had to do with the jurisdiction of a municipal court to declare a bail forfeiture in a felony case where bail was in an amount otherwise exceeding its jurisdiction when a defendant failed to appear for preliminary examination. There is no longer such a thing as a municipal court, and the statutes defining jurisdiction in civil cases have changed. Even the *Newman* court itself observed that things change, and when they do, courts must change their practices as well. That is exactly what has happened here. Without municipal courts, *Newman* is completely inapplicable. To be sure, there is not much of a change necessary for superior courts, and in fact the procedure is simpler under the new scheme. The unified superior court has jurisdiction in all instances to declare a bail forfeiture and to enter summary judgment, whether before or after a defendant has been held to answer a felony charge. Appellate jurisdiction is likewise very simple: under \$25,000, appellate division; or over \$25,000, court of appeal.

Differential Treatment of Bail Sureties

As previously stated, the courts have uniformly held that “A bail forfeiture proceeding is a special proceeding, civil in nature, and governed by the rules which govern all civil appeals.” *County of Orange v. Classified Ins. Corp.*, 218 Cal.App.3d *supra* at 557. “All civil appeals” means *all* civil appeals. An appeal in a bail forfeiture proceeding is a civil appeal, and the rules concerning appellate jurisdiction in civil cases that apply to *all* civil appeals necessarily apply to appeals in bail forfeiture proceedings. To treat bail sureties differently, simply because the courts of one county refuse to adhere to the new rules, would be an insidious differential treatment of a class of litigants without any reasonable basis in the law. Such treatment would in all likelihood be constitutionally infirm.

New Rules Should Be Applied Evenly To All Litigants

The rules for appellate jurisdiction that accompanied unification of the courts are very clear, comprehensive and efficient. They have caused no uncertainty or confusion in courts throughout the state. Only Santa Clara County has raised a cry claiming uncertainty, but only because it refuses to adapt its practices to the new rules and to treat bail forfeiture proceedings as civil. A primary guiding principle in implementing court unification was to accord equal treatment to similarly situated litigants. *See* Memorandum 2007-14, p. 11. A bail surety is a civil litigant, the same as any litigant in a civil case. Equal treatment of bail sureties means that it should be accorded the same treatment accorded any other litigant in a civil case. With regard to appellate jurisdiction, that means that a bail surety should be treated as any other civil litigant, with appeals in cases where bail is \$25,000 or less going to the appellate division of the superior court and appeals in cases where bail is over \$25,000 going to the court of appeal.

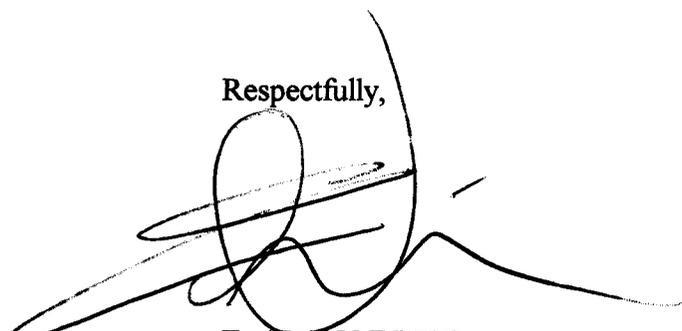
An aspect that escapes some courts, and even commissions such as this one, is that bail forfeitures do not occur in a sort of vacuum involving simply the state and the surety. At the end of the chain of liability are innocent citizens who have pledged and stand to lose valuable property, even their homes, often their only legacy for a lifetime of toil, when a forfeiture is enforced. It is these innocent parties whom the bail statutes and the law seek to protect. *See County of Los Angeles v. Surety Ins. Co.*, 162 Cal.App.3d 58, 62 (1984). The law has long determined that a proper manner of protecting litigants and their property is by setting a monetary limit at which recourse is a lower or to a higher court. In civil cases involving monetary loss, the law has determined the dividing point at \$25,000. There is no sound reason or distinction to foreclose recourse to the court of appeal on any basis other than the jurisdictional monetary amount.

May 9, 2007

The formula for appellate jurisdiction fixed in the Code of Civil Procedure is very simple, and it is easy to implement. It applies evenly to litigants in all civil cases, including bail forfeiture proceedings which have been consistently defined as civil. The tentative recommendation for clarifying appellate jurisdiction in bail forfeiture controversies will clarify nothing, because there is nothing to clarify. The statutes, both in the Penal Code and the Code of Civil Procedure, as they exist now create no conflicts or uncertainties. They are clear and adequately embrace all issues relating to original and appellate jurisdiction in civil bail forfeiture proceedings. The unified superior court has jurisdiction in all cases to declare a bail forfeiture and to enter summary judgment. With respect to appeals, if the amount of bail is \$25,000 or less, the appeal is to the appellate division of the superior court, while the appeal is to the court of appeal if the amount of bail is over \$25,000. To amend the Penal Code statutes along the lines of the tentative recommendation would indeed create confusion and complication where none presently exists. Such changes would be for the sole purpose of accommodating the courts of Santa Clara County which have been unwilling to adapt its policies and practices to the new rules.

Therefore, it is urged that the Commission not recommend any changes to the statutory scheme.

Respectfully,

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right.

E. ALAN NUNEZ

EAN:man

CALIFORNIA LAW REVISION COMMISSION

STAFF DRAFT

TENTATIVE RECOMMENDATION

Trial Court Restructuring: Appellate Jurisdiction of Bail Forfeiture

June 2007

The purpose of this tentative recommendation is to solicit public comment on the Commission's tentative conclusions. A comment submitted to the Commission will be part of the public record. The Commission will consider the comment at a public meeting when the Commission determines what, if any, recommendation it will make to the Legislature. It is just as important to advise the Commission that you approve the tentative recommendation as it is to advise the Commission that you believe revisions should be made to it.

COMMENTS ON THIS TENTATIVE RECOMMENDATION SHOULD BE RECEIVED BY THE COMMISSION NOT LATER THAN _____.

The Commission will often substantially revise a proposal in response to comment it receives. Thus, this tentative recommendation is not necessarily the recommendation the Commission will submit to the Legislature.

California Law Revision Commission
4000 Middlefield Road, Room D-1
Palo Alto, CA 94303-4739
650-494-1335
<commission@clrc.ca.gov>

SUMMARY OF TENTATIVE RECOMMENDATION

In the past decade, the trial court system has been dramatically restructured, necessitating revision of hundreds of code provisions. As a result of trial court restructuring and related amendments to provisions on civil procedure, jurisdiction of a bail forfeiture appeal became unclear.

In this tentative recommendation, the Commission proposes legislation that would clarify jurisdiction of a bail forfeiture appeal. The proposed legislation would require such an appeal to be handled as it was before unification of the municipal and superior courts. The proposal to preserve pre-unification procedures is consistent with previous work by the Commission and previous legislation on trial court restructuring.

The Commission solicits public comment on the proposal.

The Commission is continuing its work on trial court restructuring and plans to address other subjects in future recommendations.

This recommendation was prepared pursuant to Government Code Section 71674.

TRIAL COURT RESTRUCTURING: APPELLATE JURISDICTION OF BAIL FORFEITURE

1 When a criminal defendant has been released on bail¹ and then fails to appear in
2 court when required, the bail may subsequently be forfeited according to a
3 statutory procedure.² An order relating to bail forfeiture may be appealed.³ Due to
4 recent restructuring of the trial court system, some confusion exists regarding
5 when such an appeal is to be filed in the court of appeal and when such an appeal
6 is to be filed in the appellate division of the superior court.⁴

1. Bail may be posted by a surety, contracting with the government to either secure the defendant's presence when lawfully required or forfeit bail. Penal Code §§ 1268-1269, 1276, 1276.5, 1287, 1458-1459; *People v. Am. Contractors Indem. Co.*, 33 Cal. 4th 653, 657, 16 Cal. Rptr. 3d 76 (2004) (citing *People v. Ranger Ins. Co.*, 31 Cal. App. 4th 13, 22, 36 Cal. Rptr. 2d 807, 813 (1994)).

2. See Penal Code §§ 1305-1306. If the defendant fails to appear when lawfully required (for example, for arraignment, trial, judgment, etc.), "without sufficient excuse," a court must declare the bail forfeited (hereafter, a "bail forfeiture declaration order"). Penal Code § 1305(a). The bail forfeiture declaration order is not an actual forfeiture, but an initial step in forfeiture proceedings. *People v. Sur. Ins. Co.*, 82 Cal. App. 3d 229, 236-237, 147 Cal. Rptr. 65, (1978). Following the bail forfeiture declaration order, the surety is given notice of the defendant's absence. Penal Code § 1305(b) (notice required for deposits over \$400). If the surety secures the defendant's presence within a 180-day period, the court must vacate the bail forfeiture declaration order. Penal Code § 1305(c). However, if the defendant fails to appear without sufficient excuse, the court must enter summary judgment against the surety (hereafter, "bail forfeiture summary judgment"). Penal Code §§ 1305.1 (court with belief of sufficient excuse for absence may extend time period), 1306(a) (court shall enter summary judgment against bondsman).

3. A bail forfeiture declaration order may be challenged by a motion to vacate. See Penal Code § 1305; *People v. Hodges*, 205 Cal. 476, 478, 271 P. 897 (1928); 6 B. Witkin, *California Criminal Law Criminal Appeal* § 74, at 319 (3d ed. 2000). The order granting or denying the motion to vacate the bail forfeiture declaration order may be appealed. *People v. Wilcox*, 53 Cal. 2d 651, 654-655, 2 Cal. Rptr. 754, 349 P. 2d 522 (1960) (citing Code Civ. Proc. § 963 and *Howe v. Key Sys. Transit Co.*, 198 Cal. 525, 531, 246 P. 39, 41 (1926)).

A bail forfeiture summary judgment against the surety is a consent judgment. *People v. Am. Contractors Indem. Co.*, 33 Cal. 4th 653, 663-664, 93 P.3d 1020, 16 Cal. Rptr. 3d 76 (citing *People v. Nat'l Auto. & Cas. Co.*, 242 Cal. App. 2d 150, 152 n. 2, 51 Cal. Rptr. 212 (1966)). As such, the summary judgment is not appealable, unless it was not entered according to the consent in the bond. *Id.* at 664 (citing *County of Los Angeles v. Sur. Ins. Co.*, 164 Cal. App. 3d 1221, 1224, 211 Cal. Rptr. 201, 203 (1985)).

An order relating to bail forfeiture may also be challenged by an extraordinary writ. See, e.g., *Newman v. Super. Ct. of Los Angeles County*, 67 Cal. 2d 620, 621, 432 P.2d 972, 63 Cal. Rptr. 284 (1967) (court of appeal granted petition for writ of mandate). Because the jurisdiction of an extraordinary writ tracks appellate jurisdiction, special provision regarding a challenge in the form of an extraordinary writ is not required. See Cal. Const. art. VI, § 10 ("[t]he appellate division of the superior court has original jurisdiction in proceedings for extraordinary relief in the nature of mandamus, certiorari, and prohibition directed to the superior court in causes subject to its appellate jurisdiction"); Code of Civil Procedure §§ 85, 904.1, 904.2, 1068(b), 1085(b), 1103(b).

4. See Letter from Mr. Alex Cerul to California Law Revision Commission (October 5, 2006) (attached to Commission Staff Memorandum 2007-14 (April 18, 2007), Exhibit pp. 1-4 (available at www.clrc.ca.gov)).

1 The Law Revision Commission is responsible for recommending revisions to
2 the codes to implement trial court restructuring.⁵ The Commission recommends
3 that legislation be enacted to clarify the appellate jurisdiction of bail forfeiture
4 cases.

5 Throughout the process of implementing trial court restructuring, the
6 Commission has been careful not to make any substantive change, other than
7 adjusting a provision to account for unification.⁶ This tentative recommendation
8 continues that practice by recommending legislation that would preserve the pre-
9 unification path of bail forfeiture appeals.

10 **Trial Court Unification**

11 One of the trial court restructuring reforms was unification of the trial courts.
12 The process of trial court unification began in 1998 after California voters
13 approved a measure permitting the municipal and superior courts in each county to
14 unify.⁷ The same year, the codes were revised on Commission recommendation to
15 accommodate unification, i.e., to make the statutes workable in a county in which
16 the municipal and superior courts decided to unify.⁸

17 Three guiding principles were used in revising the codes and Constitution to
18 accommodate unification. First, care was taken “to preserve existing rights and
19 procedures despite unification, with no disparity of treatment between a party

5. Gov’t Code § 71674. The Commission has recommended revisions to hundreds of code provisions in response to this directive. Most of the recommended reforms have been enacted. See *Trial Court Unification: Revision of Codes*, 28 Cal. L. Revision Comm’n Reports 51 (1998) (hereafter *Revision of Codes*), implemented by 1998 Cal. Stat. ch. 931, 1999 Cal. Stat. ch. 344; *Report of the California Law Revision Commission on Chapter 344 of the Statutes of 1999 (Senate Bill 210)*, 29 Cal. L. Revision Comm’n Reports 657 (1999) (hereafter *Report on Chapter 344*), implemented by 1999 Cal. Stat. ch. 344; *Trial Court Restructuring: Part 1*, 32 Cal. L. Revision Comm’n Reports 1 (2002) (hereafter *Trial Court Restructuring: Part 1*), implemented by 2002 Cal. Stat. ch. 784 & ACA 15, approved by the voters Nov. 5, 2002 (Proposition 48); *Trial Court Restructuring: Part 2*, 33 Cal. L. Revision Comm’n Reports 169 (2003) (hereafter *Trial Court Restructuring: Part 2*), implemented by 2003 Cal. Stat. ch. 149.

Some reforms recommended by the Commission are pending in the Legislature. See *Statutes Made Obsolete by Trial Court Restructuring: Part 3*, 36 Cal. L. Revision Comm’n Reports __ (2006), which would be implemented by Senate Bill 649 (Committee on Judiciary) (2007-2008 Reg. Sess.).

6. See *Revision of Codes*, *supra* note 5, at 60 (1998); *Trial Court Unification: Constitutional Revision (SCA 3)*, 24 Cal. L. Revision Comm’n Reports 1, 18-19, 28 (1994) (hereafter *Constitutional Revision*).

7. The measure permitted the municipal and superior courts in each county to unify on a majority vote by the municipal court judges and the superior court judges in the county. Former Cal. Const. art. VI, § 5(e); 1996 Cal. Stat. res. ch. 36 (SCA 4), approved by the voters June 2, 1998 (Proposition 220).

Other major trial court restructuring reforms were:

- State, instead of local, funding of trial court operations. See 1997 Cal. Stat. ch. 850; Gov’t Code §§ 77000-77655.
- Enactment of the Trial Court Protection and Governance Act, which established a new personnel system for trial court employees. See 2000 Cal. Stat. ch. 1010; Gov’t Code §§ 71600-71675.

8. *Revision of Codes*, *supra* note 5; see also 1999 Cal. Stat. ch. 344; *Report on Chapter 344*, *supra* note 5.

1 appearing in municipal court and a similarly situated party appearing in superior
2 court as a result of unification of the municipal and superior courts in the county.”⁹
3 Second, steps were taken to ensure that the court of appeal would continue to have
4 jurisdiction over cases historically within its appellate jurisdiction.¹⁰ Third, efforts
5 were made to ensure that unification did not increase the workload of the courts of
6 appeal, but generally left intact the respective workloads of the courts of appeal
7 and appellate departments¹¹ of the superior courts.¹²

8 By 2001, the trial courts in each county had unified, and the municipal courts
9 were subsumed into a unified superior court.¹³ Further revisions of the codes were
10 made on Commission recommendation in 2002 and 2003 to reflect that municipal
11 courts no longer existed.¹⁴

12 This tentative recommendation addresses a matter, jurisdiction of bail forfeiture
13 appeals, which was recently identified as needing attention.¹⁵ As before, the
14 Commission has tried to maintain the pre-unification procedural status quo, while
15 making the law workable in a unified court system.

16 **Appellate Jurisdiction of Bail Forfeiture**

17 Jurisdiction of a bail forfeiture appeal became unclear after provisions on civil
18 procedure were amended to implement trial court unification. Even though a bail
19 forfeiture arises in a criminal case, it is a civil matter.¹⁶ The rules governing
20 jurisdiction of a civil appeal currently base jurisdiction on the amount in

9. *Revision of Codes*, *supra* note 5, at 60; see also *Lempert v. Super. Ct.*, 112 Cal. App. 4th 1161, 1169, 5 Cal. Rptr. 3d 700 (2003); *Gen. Elec. Capital Auto Fin. Serv., Inc. v. App. Div. of the Super. Ct.*, 88 Cal. App. 4th 136, 141, 105 Cal. Rptr. 2d 552 (2001).

10. See Cal. Const. art. VI, § 11(a).

11. The appellate department of the superior court was an entity created by statute. See former Code Civ. Proc. § 77 (1984 Cal. Stat. ch. 704). When unification on a county-by-county basis was approved by the voters in 1998, the appellate department was replaced by the appellate division of the superior court, an entity of constitutional dimension. See Cal. Const. art. VI, § 4; Code Civ. Proc. § 77; 1998 Cal. Stat. ch. 931, § 21; 2 B. Witkin, *California Procedure Courts* § 346, at 141 (4th ed. 2006 Supp.); *Constitutional Revision*, *supra* note 6, at 30-33. The Constitution requires the Chief Justice to “assign judges to the appellate division for specified terms pursuant to rules, not inconsistent with statute, adopted by the Judicial Council to promote the independence of the appellate division.” Cal. Const. art. VI, § 4.

12. *Constitutional Revision*, *supra* note 6, at 32.

13. The courts in Kings County were the last to unify, on February 8, 2001.

14. See *Trial Court Restructuring: Part 1*, *supra* note 5; *Trial Court Restructuring: Part 2*, *supra* note 5.

15. See Letter from Mr. Cerul, *supra* note 4.

16. Consequently, civil, not criminal, provisions apply to a bail forfeiture appeal. See *People v. Am. Contractors Indem. Co.*, 33 Cal. 4th 653, 657, 16 Cal. Rptr. 3d 76 (2004) (citing *People v. Wilcox*, 53 Cal. 2d 651, 654, 2 Cal. Rptr. 754, 349 P. 2d 522 (1960)); *People v. United Bonding Co.*, 272 Cal. App. 2d 441, 442, 77 Cal. Rptr. 310 (1969) (civil appellate rules for time to file notice of appeal apply to a bail forfeiture case).

1 controversy.¹⁷ Before unification, however, jurisdiction of a bail forfeiture appeal
2 was not based on the amount in controversy, i.e., the amount of bail.¹⁸ Instead, it
3 was determined by which court ordered the forfeiture. Forfeiture ordered by the
4 municipal court was appealed to the appellate department of the superior court.¹⁹
5 Forfeiture ordered by the superior court was appealed to the court of appeal.²⁰

6 Since unification, a survey of bail forfeiture appeals illustrates that courts are
7 confused over which rules apply.²¹ Courts do not uniformly apply the provisions
8 governing the jurisdiction of civil appeals,²² nor do they uniformly direct bail
9 forfeiture appeals along the pre-unification path.²³ In at least one case, the appeal
10 followed neither the pre-unification path nor the provisions on civil procedure.²⁴
11 Legislation is needed to resolve the confusion.

17. Code Civ. Proc. §§ 85 (a limited civil case is generally one in which the amount in controversy is not more than \$25,000), 904.1 (appeal of case that is not a limited civil case is to court of appeal), 904.2 (appeal of limited civil case is to appellate division of superior court).

18. *Newman v. Super. Ct. of Los Angeles County*, 67 Cal. 2d 620, 621-623, 432 P.2d 972, 63 Cal. Rptr. 284 (1967); see, e.g., *County of Los Angeles v. Am. Bankers Ins. Co.*, 202 Cal. App. 3d 1291, 1293, 1297, 249 Cal. Rptr. 540 (1988) (court of appeal heard bail forfeiture appeal involving failure to appear before superior court, even though amount of bail was less than jurisdictional limit at that time).

19. Former Cal. Const. art. VI § 11 (appellate jurisdiction of superior court in causes statutorily prescribed as arising in municipal court); former Code Civ. Proc. §§ 77(e), 904.2 (appealable orders from municipal court); see also *Newman*, 67 Cal. 2d at 620-625.

20. Former Cal. Const. art. VI § 11 (appellate jurisdiction of court of appeal when superior court has original jurisdiction); former Code Civ. Proc. § 904.1 (appealable orders from superior court); see, e.g., *County of Los Angeles v. Am. Bankers Ins. Co.*, 202 Cal. App. 3d 1291, 1297, 249 Cal. Rptr. 540 (1988).

21. Such confusion is also demonstrated by the Santa Clara County Superior Court's request for clarification. See Letter from Mr. Cerul, *supra* note 4.

22. Under those provisions, an appeal involving an amount in controversy of \$25,000 or less is taken to the appellate division of the superior court. Code Civ. Proc. §§ 85, 904.2. If the appeal involves an amount in controversy exceeding \$25,000, the appeal is taken to the court of appeal. Code Civ. Proc. §§ 85, 904.1.

Some courts do not apply those provisions. See, e.g., *People v. Granite State Ins. Co.*, 2003 WL 21227856 (appeal from forfeiture of bail less than \$25,000 taken to court of appeal instead of appellate division of superior court), *People v. Accredited Sur. & Cas. Co.*, 2003 WL 1542116 (same). Other courts apply such provisions, even when that causes an appeal to depart from the pre-unification path. See, e.g., *People v. Alistar*, 115 Cal. App. 4th 122, 9 Cal. Rptr. 3d 497 (2003) (appeal from forfeiture of bail exceeding \$25,000 in misdemeanor case taken to court of appeal), *People v. Safety Nat'l Cas. Corp.*, No. FO50421 (5th Dist. filed March 27, 2007) (same); see also discussion of "Appellate Jurisdiction Based on Pre-Unification Appeal Path" *infra*.

23. See, e.g., *County of Orange v. Ranger*, 135 Cal. App. 4th 820, 37 Cal. Rptr. 3d 575 (2005) (appeal from forfeiture of bail by magistrate at preliminary proceeding taken to court of appeal, instead of appellate division of superior court); see *Alistar*, 115 Cal. App. 4th 122 (appeal from forfeiture of bail exceeding \$25,000 in misdemeanor case taken to court of appeal); *Safety Nat'l*, No. FO50421 (5th Dist. filed March 27, 2007) (same); see also discussion of "Appellate Jurisdiction Based on Pre-Unification Appeal Path" *infra*.

24. See, e.g., *People v. Ranger*, 145 Cal. App. 4th 23, 51 Cal. Rptr. 3d 326 (2006). The case involved an appeal from forfeiture by a magistrate at a preliminary proceeding on a felony charge of bail less than \$25,000. *Id* at 25. The appeal was taken to the court of appeal. *Id* at 23, 31. If the provisions governing the appeal of a civil matter had been applied, the appeal would have been taken to the appellate division of the

1 **Possible Approaches**

2 One way to resolve the confusion would be to make clear that jurisdiction of a
3 bail forfeiture appeal is based on the amount in controversy, like any other civil
4 appeal. Another possibility would be to treat bail forfeiture appeals the same way
5 as before unification, when jurisdiction was not dependent on the amount in
6 controversy.

7 ***Appellate Jurisdiction Based on Amount in Controversy***

8 If jurisdiction of a bail forfeiture appeal were based on the amount in
9 controversy, as in other civil cases, then an appeal involving bail of \$25,000 or
10 less would be heard by the appellate division of the superior court²⁵ and an appeal
11 involving bail of more than \$25,000 would be heard by the court of appeal.²⁶ That
12 has the appeal of simplicity. However, the Commission does not recommend this
13 approach.

14 This approach would cause some appeals to depart from the pre-unification path.
15 Such departure would clash with guiding unification principles not to disrupt the
16 historical jurisdiction of the courts of appeal and to preserve the workload balance
17 between the courts of appeal and the appellate divisions of the superior court.

18 More significantly, basing jurisdiction on the amount of bail in certain appeals
19 — those arising in a post-preliminary examination felony case in which bail of
20 \$25,000 or less was forfeited — would unconstitutionally diminish the appellate
21 jurisdiction of the courts of appeal from what it was as of June 30, 1995.²⁷

22 ***Appellate Jurisdiction Based on Pre-Unification Appeal Path***

23 A second possibility would be to direct bail forfeiture appeals in the same
24 manner as before unification. This approach would be consistent with the overall
25 policy of preserving existing rights and procedures despite unification.²⁸ It would
26 also comply with the constitutional provision preserving the jurisdiction of the
27 courts of appeal as of June 30, 1995.²⁹ For these reasons, the Commission
28 recommends this approach.

superior court, *not* the court of appeal. See Code Civ. Proc. § 85, 904.2. It is also apparent that the pre-unification path was not followed: Before unification, the appeal from a forfeiture by a magistrate at a preliminary proceeding on a felony charge went to the appellate department — now, appellate division — of the superior court, *not* the court of appeal. See note 43 *infra*.

25. See Code Civ. Proc. §§ 85, 904.2.

26. See Code Civ. Proc. §§ 85, 904.1.

27. See Cal. Const. art. VI § 11(a) (“courts of appeal have appellate jurisdiction when superior courts have original jurisdiction in causes of a type within the appellate jurisdiction of the courts of appeal on June 30, 1995”). Because an appeal from a bail forfeiture that occurred in a felony prosecution in superior court involving an amount of bail less than \$25,000 was in the appellate jurisdiction of the courts of appeal as of June 30, 1995, the Legislature cannot constitutionally remove it from the court of appeal. See *id*.

28. See discussion of “Trial Court Unification” *supra*.

29. See *supra* note 27.

1 The recommended legislation is thus based on the pre-unification path of bail
2 forfeiture appeals. Before unification, jurisdiction of a bail forfeiture appeal
3 depended on which trial court, municipal or superior, ordered the forfeiture.³⁰
4 Specifically, an appeal from a bail forfeiture ordered in municipal court went to
5 the appellate department of the superior court,³¹ and an appeal from bail forfeiture
6 ordered in superior court went to the court of appeal.³²

7 To carry forward pre-unification procedures in a system without a municipal
8 court, the recommended legislation uses a proxy for which trial court would have
9 ordered a bail forfeiture before unification: the underlying criminal charge.³³ For a
10 felony, the court ordering forfeiture also depended on the stage of the case. The
11 proposal, therefore, bases jurisdiction of a bail forfeiture appeal on the underlying
12 criminal charge and the stage of the proceeding at which bail was forfeited.³⁴

13 The recommended legislation would direct an appeal from bail forfeiture in a
14 misdemeanor case³⁵ to the appellate division of the superior court.³⁶ Before
15 unification, a misdemeanor case was tried in the municipal court.³⁷ A bail
16 forfeiture in a misdemeanor case was an order by the municipal court, and
17 appealed to the appellate department of the superior court.³⁸

18 The recommended legislation would base appellate jurisdiction of a bail
19 forfeiture in a felony case³⁹ according to when the forfeiture occurs. If the
20 forfeiture occurs at a preliminary proceeding before a magistrate,⁴⁰ the appeal
21 would be to the appellate division of the superior court.⁴¹ This reflects the pre-
22 unification practice that such preliminary proceedings were conducted by a

30. Newman v. Super. Ct. of Los Angeles County, 67 Cal. 2d 620, 621-623, 432 P.2d 972, 63 Cal. Rptr. 284 (1967).

31. See *supra* note 19.

32. See *supra* note 20.

33. The underlying criminal charge determined which court, municipal or superior, had jurisdiction over the criminal case. See *infra* notes 37, 46.

34. See proposed Penal Code § 1305.5 *infra*.

35. A “misdemeanor case” only includes misdemeanor charges; it does not include a felony charge. Penal Code § 671(g); *cf.* note 39 *infra*.

36. See proposed Penal Code § 1305.5(c) *infra*.

37. The municipal court had jurisdiction over a misdemeanor charge. Former Penal Code § 1462(a). The municipal court had no jurisdiction over a felony. In re Joiner, 180 Cal. App. 2d 250, 254, 4 Cal. Rptr. 667 (1960).

38. See *supra* note 19.

39. A felony case may include a misdemeanor charged with a felony. See Penal Code § 671(f); see also note 46 *infra*; *cf.* *supra* note 35.

40. Prosecution of a felony by information, rather than indictment, in superior court was (and still is) preceded by a preliminary hearing before a magistrate. See Cal. Const. art. I, § 14; Penal Code §§ 738-739, 806, 872; see also note 44 *infra*.

41. See proposed Penal Code § 1305.5(b) *infra*.

1 magistrate in municipal court,⁴² and that an appeal from that court went to the
2 appellate department of the superior court.⁴³

3 If the forfeiture occurs after a legal commitment by a magistrate or an
4 indictment,⁴⁴ the appeal would be to the court of appeal.⁴⁵ This would also mirror
5 the pre-unification situation: After a legal commitment or an indictment, a felony
6 case was prosecuted in superior court⁴⁶ not municipal court, and an appeal of a bail
7 forfeiture from that court went to the court of appeal.⁴⁷

8 *Effect of the Recommended Legislation*

9 Pursuant to constitutional and unification principles, the Commission proposes
10 legislation that would direct bail forfeiture appeals as they were before unification.

11 The recommended legislation would help to prevent disputes and confusion over
12 the proper jurisdiction for a bail forfeiture appeal. That would benefit the public by
13 (1) reducing litigation expenses of the People and of other parties to bail forfeiture
14 proceedings, and (2) conserving judicial resources. The recommended legislation
15 should be promptly enacted to achieve those results.

42. See Cal. Const. art. I, § 14; Penal Code §§ 738-739, 806; *People v. Thompson*, 50 Cal. 3d 134, 155, 785 P.2d 857, 266 Cal. Rptr. 309 (1990); *Lempert v. Super. Ct. of Santa Clara County*, 112 Cal. App. 4th 1161, 1168, 5 Cal Rptr. 3d 700 (2003); see also Uelmen, *California Criminal Procedure and Trial Court Unification* (March 2002), at 2; *California Criminal Law Practice and Procedure Arraignment* § 6.10, at 144-45, *Preliminary Hearings* § 8.1, at 188-89, *California Judges Benchbook: Criminal Pretrial Proceedings, Commencing the Action* § 1.1, at 3.

43. See former Code Civ. Proc. §§ 77(e), 904.2; *Newman v. Super. Ct. of Los Angeles County*, 67 Cal. 2d 620, 432 P.2d 972, 63 Cal. Rptr. 284 (1967) (directing appeal from forfeiture by magistrate in municipal court at preliminary hearing on felony charge to appellate department of superior court).

44. A felony is prosecuted either upon an indictment or upon an information, which occurs after a legal commitment by a magistrate. See Cal. Const. art I, § 14; Penal Code §§ 739, 872.

45. See proposed Penal Code § 1305.5(a) *infra*.

46. The superior court had jurisdiction over a felony case, which included a misdemeanor committed in connection with a felony. See Penal Code § 954; *People v. Leney*, 213 Cal. App. 3d 265, 268, 261 Cal. Rptr. 541 (1989) (superior court jurisdiction over properly joined misdemeanor); 4 B. Witkin, *California Criminal Law Jurisdiction & Venue* § 14, at 102 (3d. ed. 2000) (citing Cal. Const. art. VI, § 10 and Penal Code § 1462(a)). The superior court retained jurisdiction over connected misdemeanor charges even if the felony charges were eliminated before trial. *People v. Clark*, 17 Cal. App. 3d 890, 897-898, 95 Cal. Rptr. 411 (1971).

47. See *supra* note 20.

PROPOSED LEGISLATION

1 **Penal Code § 1305.5 (added). Appeal from order denying motion to vacate bail forfeiture**
2 **declaration**

3 SEC. _____. Section 1305.5 is added to the Penal Code, to read:

4 1305.5. Notwithstanding Sections 85, 580, 904.1, and 904.2 of the Code of Civil
5 Procedure, if the people, a surety, or other person appeals from an order of the
6 superior court on a motion to vacate a bail forfeiture declared under Section 1305,
7 the following rules apply:

8 (a) If the bail forfeiture was in a felony case, or in a case in which both a felony
9 and a misdemeanor were charged, and the forfeiture occurred at the judgment or
10 after the indictment or the legal commitment by a magistrate, the appeal is to the
11 court of appeal and it shall be treated as an unlimited civil case, regardless of the
12 amount of bail.

13 (b) If the bail forfeiture was in a felony case, or in a case in which both a felony
14 and a misdemeanor were charged, and the forfeiture occurred at the preliminary
15 hearing or at another proceeding before the legal commitment by a magistrate, the
16 appeal is to the appellate division of the superior court and it shall be treated as a
17 limited civil case, regardless of the amount of bail.

18 (c) If the bail forfeiture was in a misdemeanor case, the appeal is to the appellate
19 division of the superior court and it shall be treated as a limited civil case,
20 regardless of the amount of bail.

21 **Comment.** Section 1305.5 is added to clarify the appellate jurisdiction of bail forfeiture
22 matters after trial court unification. The provision preserves the procedural pre-unification status
23 quo. See, e.g., *Newman v. Super. Ct. of Los Angeles County*, 67 Cal. 2d 620, 623, 432 P.2d 972,
24 63 Cal. Rptr. 284 (1967) (amount of bail does not determine jurisdiction of appeal relating to bail
25 forfeiture order); *People v. Topa Ins. Co.*, 32 Cal. App. 4th 296, 38 Cal. Rptr. 2d 167 (1995)
26 (court of appeal heard bail forfeiture appeal involving failure to appear before superior court in
27 felony case, even though bail was less than jurisdictional limit of municipal court); *County of Los*
28 *Angeles v. Am. Bankers Ins. Co.*, 202 Cal. App. 3d 1291, 249 Cal. Rptr. 540 (1988) (same); see
29 also *People v. Clark*, 17 Cal. App. 3d 890, 897-898, 95 Cal. Rptr. 411 (1971) (superior court has
30 jurisdiction to try connected misdemeanor even if felony charge eliminated before trial); *People*
31 *v. Leney*, 213 Cal. App. 3d 265, 268, 261 Cal. Rptr. 541 (1989) (superior court has jurisdiction to
32 try remaining misdemeanor even if felony charge eliminated before judgment).

33 See Section 691 (“felony case” and “misdemeanor or infraction case” defined).

34 **Penal Code § 1306 (amended). Procedures after court declares bail forfeiture**

35 SEC. _____. Section 1306 of the Penal Code is amended to read:

36 1306. (a) When any bond is forfeited and the period of time specified in Section
37 1305 has elapsed without the forfeiture having been set aside, the court which has
38 declared the forfeiture, ~~regardless of the amount of the bail,~~ shall enter a summary
39 judgment against each bondsman named in the bond in the amount for which the
40 bondsman is bound. The judgment shall be the amount of the bond plus costs, and

1 notwithstanding any other law, no penalty assessments shall be levied or added to
2 the judgment.

3 (b) If a court grants relief from bail forfeiture, it shall impose a monetary
4 payment as a condition of relief to compensate the people for the costs of returning
5 a defendant to custody pursuant to Section 1305, except for cases where the court
6 determines that in the best interest of justice no costs should be imposed. The
7 amount imposed shall reflect the actual costs of returning the defendant to
8 custody. Failure to act within the required time to make the payment imposed
9 pursuant to this subdivision shall not be the basis for a summary judgment against
10 any or all of the underlying amount of the bail. A summary judgment entered for
11 failure to make the payment imposed under this subdivision is subject to the
12 provisions of Section 1308, and shall apply only to the amount of the costs owing
13 at the time the summary judgment is entered, plus administrative costs and
14 ~~interests~~ interest.

15 (c) If, because of the failure of any court to promptly perform the duties
16 enjoined upon it pursuant to this section, summary judgment is not entered within
17 90 days after the date upon which it may first be entered, the right to do so expires
18 and the bail is exonerated.

19 (d) A dismissal of the complaint, indictment, or information after the default of
20 the defendant shall not release or affect the obligation of the bail bond or
21 undertaking.

22 (e) The district attorney or county counsel shall:

23 (1) Demand immediate payment of the judgment within 30 days after the
24 summary judgment becomes final.

25 (2) If the judgment remains unpaid for a period of 20 days after demand has
26 been made, shall forthwith enforce the judgment in the manner provided for
27 enforcement of money judgments generally. If the judgment is appealed by the
28 surety or bondsman, the undertaking required to be given in these cases shall be
29 provided by a surety other than the one filing the appeal. The undertaking shall
30 comply with the enforcement requirements of Section 917.1 of the Code of Civil
31 Procedure. Notwithstanding Sections 85, 580, 904.1, and 904.2, jurisdiction of the
32 appeal, and treatment of the appeal as a limited civil case or an unlimited civil
33 case, is governed by Section 1305.5.

34 (f) The right to enforce a summary judgment entered against a bondsman
35 pursuant to this section shall expire two years after the entry of the judgment.

36 **Comment.** Subdivision (a) of Section 1306 is amended to delete language that is obsolete due
37 to trial court unification. Before unification, it was necessary to make clear that a municipal court
38 was authorized to enter summary judgment based on a bail forfeiture even though the amount of
39 bail exceeded the jurisdictional limit of the municipal court. See 1977 Cal. Stat. ch. 889, § 3.5;
40 Newman v. Super. Ct. of Los Angeles County, 67 Cal. 2d 620, 622, 432 P.2d 972, 63 Cal. Rptr.
41 284 (1967); see also Department of Consumer Affairs, Analyst's Report SB 1107 (Song), p. 2.
42 Because municipal courts have been eliminated and the superior court has no jurisdictional limit,
43 that language is no longer needed.

44 Subdivision (b) is amended to correct an apparent typographical error.

1 Subdivision (e)(2) is amended to clarify the jurisdiction and treatment of an appeal from a
2 summary judgment based on a bail bond. The amendment preserves the procedural pre-
3 unification status quo. See Section 1305.5 Comment.
